

Election Assistance Commission

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(b) All Commission records shall be available to the public unless they are specifically exempt under this part.

(c) In the interest of efficiency and economy, the Commission's preference is to furnish records to requesters in electronic format, when possible.

(d) To carry out this policy, the Commission shall designate a Chief Freedom of Information Act Officer (Chief FOIA Officer). The Chief FOIA Officer shall designate one or more Commission officials, as appropriate, as FOIA Public Liaison and/or as FOIA Officers. A FOIA Public Liaison shall serve as a supervisory official to whom a FOIA requester can raise questions about the service the FOIA requester has received. A FOIA Officer shall have the authority, subject to the direction and supervision of the Chief FOIA Officer, the requirements of this part, and the FOIA, to make decisions concerning disclosure of records to the public.

§ 9405.4 Availability of records.

(a) The FOIA and its provisions apply only to existing Commission records; the FOIA does not require the creation of new records.

(b) In accordance with 5 U.S.C. 552(a)(2), the Commission shall make the following materials available for public inspection and copying:

(1) Statements of policy and interpretation that have been adopted by the Commission but have not been published in the FEDERAL REGISTER;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Copies of all records, regardless of form or format, that have been released to any person under this paragraph and that, because of their nature or subject matter, the Commission determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(4) A general index of the records referred to in paragraph (b)(3) of this section.

(c) In accordance with 5 U.S.C. 552(a)(3), the Commission shall make available, upon proper request, all non-exempt Commission records, or portions of records, not previously made

public under 5 U.S.C. 552(a)(1) and (a)(2).

(d) The Commission shall maintain and make available current indexes and supplements providing identifying information regarding any matter issued, adopted, or promulgated after July 4, 1967. These indexes and supplements shall be published and made available on at least a quarterly basis for public distribution unless the Commission determines by Notice in the FEDERAL REGISTER that publication would be unnecessary, impracticable, or not feasible due to budgetary considerations. Nevertheless, copies of any index or supplement shall be made available upon request at a cost not to exceed the direct cost of duplication.

(e) If documents or files contain both disclosable and non-disclosable information, the non-disclosable information will be deleted and the disclosable information released, unless the disclosable portions cannot be reasonably segregated from the other portions in a manner which will allow meaningful information to be disclosed.

(f) All records created in the process of implementing provisions of 5 U.S.C. 552 will be maintained by the Commission in accordance with the authority granted by the National Archives and Records Service of the General Services Administration.

(g) The Commission encourages the public to explore the information available on the Commission's Web site, located at <http://www.eac.gov>.

§ 9405.5 Categories of exemptions.

(a) No FOIA requests under 5 U.S.C. 552 shall be denied release unless the record contains, or its disclosure would reveal, matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are, in fact, properly classified under such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute, provided that such statute:

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(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential. Such information includes confidential business information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount of source of income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, if the disclosure is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. For purposes of this section, trade secret means a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. Examples of trade secrets may include, but are not limited to, plans, schematics, specifications of materials used in production, source code used to develop software, technical descriptions of manufacturing process, quality control methodology, and test results. The following procedures shall be used for submitting business information in confidence:

(i) Clearly mark any portion of any data or information being submitted that in the submitter's opinion is a trade secret or commercial and financial information that the submitter is claiming should be treated as privileged and confidential and submit such data or information separately from other material being submitted to the Commission;

(ii) A request for confidential treatment shall be addressed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005 and shall indicate clearly on the envelope that it is a request for confidential treatment.

(iii) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential under paragraph (a)(4) of this section, the submitter shall provide the following, which may be disclosed to the public:

(A) A written description of the nature of the subject information and a justification for the request for its confidential treatment, and

(B) A certification in writing under oath that substantially identical information is not available to the public.

(iv) Approval or denial of requests shall be made only by the Chief FOIA Officer or his or her designees. A denial shall be in writing, shall specify the reason for the denial, and shall advise the submitter of the right to appeal to the Commission.

(v) For good cause shown, the Commission may grant an appeal from a denial by the Chief FOIA Officer or his or her designee if the appeal is filed within 15 days after receipt of the denial. An appeal shall be addressed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005 and shall clearly indicate that it is a confidential submission appeal. An appeal will be decided within 20 days after its receipt (excluding Saturdays, Sundays, and legal holidays) unless an extension, stated in writing with the reasons therefore, has been provided to the person making the appeal.

(vi) Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender unless it is the subject of a

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request under the FOIA or of judicial discovery proceedings.

(5) Interagency or intra-agency memoranda or letters that would not be available by law to a party in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) Any portion of a record that reasonably can be segregated from the balance of the record shall be provided to any individual requesting such record after deletion of the portions which are exempt. The amount of information deleted and the exemption under which the deletion is made shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by an ex-

emption in paragraph (a) of this section under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

(c) If a requested record is one of another government agency or deals with subject matter to which a government agency other than the Commission has exclusive or primary responsibility, the request for such a record shall be promptly referred by the Commission to that agency for disposition or guidance as to disposition.

(d) Nothing in this part authorizes withholding of information or limiting the availability of records to the public, except as specifically provided; nor is this part authority to withhold information from Congress.

§ 9405.6 Discretionary release of exempt records.

The Commission may, in its discretion, release requested records despite the applicability of the exemptions in § 9405.5, if it determines that it is in the public interest and that the rights of third parties would not be prejudiced. The Executive Director will have the authority to determine that requested records may be released despite otherwise applicable exemptions.

§ 9405.7 Requests for records.

(a) Requests for copies of Commission records under the FOIA shall be made in writing and addressed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005. The request shall reasonably describe the records sought with sufficient specificity with respect to names, dates, and subject matter to permit the records to be located. A requester will be promptly advised if the records cannot be located on the basis of the description given and that further identifying information must be provided before the request can be satisfied.

(b) Requests for Commission records and copies thereof shall specify the preferred form or format (including electronic formats) of the response. The Commission shall accommodate requesters as to form or format if the record is readily available in that form